

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

REMARKS

Claims 1-15 and 25-47 are pending. Claims 41-47 have been added in this Amendment.

Anticipation Rejection over Prior Art Figure 1

Claims 1-4, 32-38 and 40

The Examiner argues that Prior Art Figure 1 and sections of the specification that describe prior art (hereinafter, collectively "Prior Art Figure 1") anticipates Claims 1-4, 32-38 and 40. Applicant has clarified the claims to recite that the at least one selected area reduces the dimension of the crate opening relative to a second portion of the inner surface of the side wall at the first distance from the bottom surface. It is believed that this clarification addresses the Examiner's concerns regarding Prior Art Figure 1.

Anticipation Rejection over Apps '532

Claims 7 and 9-11

The Examiner has rejected claims 7 and 9-11 as anticipated by Apps '532 (U.S. Patent No. 4,932,532).

The Examiner has clarified his rejection by indicating that he is reading the redoubt members 66, 68 and redoubt struts 70, 72 as the claimed "drag rail." Although Applicant appreciates the Examiner's clarification of his rejection, this is not a reasonable interpretation of the term "drag rail." The redoubt members 66, 68 and redoubt struts 70, 72 are not a "rail" under any reasonable definition of the term "rail." Therefore, claims 7 and 9-11 are patentable.

Applicant has amended claim 9 to clarify that the portion extending over the drag rail is in the corner and extends inwardly from both side walls. Even under the

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

Examiner's interpretation, a single contoured portion does not extend inwardly from both side walls. Therefore, claim 9 is independently patentable. Claim 11 has been similarly amended and is also independently patentable.

Claims 43-47 have been added to further clarify the "drag rail" and to further distinguish Apps '532. Claims 43-47 are independently patentable.

Obviousness Rejection over Prior Art Figure 1

The Examiner has rejected claims 1-4, 32-38 and 40 alternatively as being obvious, noting only that it would be obvious to stack two similar crates. Applicant does not disagree that the crates in Prior Art Figure 1 were stacked and were intended to be stacked. However, these claims are not obvious or anticipated for the reasons explained above with respect to the Examiner's anticipation rejection.

Obviousness Rejection over Prior Art Figure 1 in View of Wise

The Examiner has rejected claims 5, 6 and 25-29 as obvious over Prior Art Figure 1 in view of Wise (U.S. Patent No. 4,848,580). Wise discloses gussets (e.g. 77, 79, 81, 83) for reinforcing a lip 25 on the container. The lip 25 of the container extends upwardly from a position outwardly of the periphery of the side walls. Thus, when the lid 75 is placed on the container, it rests on the lip 25, as do any containers stacked on the lid 75. Because the weight of stacked containers will rest on the lip 25, Wise provides gussets that angle outwardly from the side walls in order to provide support for the lip 25.

There is no separate lip in the Prior Art Figure 1 container. There is only a single upper surface to the side wall. Adding the angled gussets of Wise would only weaken the side wall, not strengthen it. Therefore, there is no motivation for

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

modifying the Prior Art Figure 1 container to include the gussets of Wise and claims 5, 6 and 25-29 are not obvious.

Additionally, claim 26 specifies that the "thickness of the side wall decreases as the side wall extends upwardly from the bottom surface to enlarge a top opening of the crate, and the at least one selected area comprises a portion of the side wall where the thickness is reduced less." The thickness of the side walls in Wise do not vary in the manner claimed in claim 26. Therefore, claim 26 is independently patentable.

Wise does not disclose that "at least one portion of an upper edge is vertically aligned with at least one portion of a lower edge of the side wall," as recited in claim 27. Instead, the walls of Wise would nest within one another. Therefore, claim 27 is independently patentable.

Because the gussets of Wise angle outwardly, the outer surface of the side wall is not generally perpendicular to the bottom surface as recited in claim 29. Therefore, claim 29 is independently patentable.

Obviousness Rejection over Apps '532 in View of Elvin-Jensen

The Examiner has rejected claims 8 and 31 as obvious over Apps '532 in view of Elvin-Jensen (U.S. Patent No. 5,439,113). However, the Examiner describes Elvin-Jensen as disclosing only "areas of no radius where the wall is planar to areas where there is a radius." First, this is an admission by the Examiner that there is only a single radius in Elvin-Jensen, because the Examiner calls the wall surface "no radius." A single radius cannot be a "variable radius blend." At the very least, even if the flat inner wall surface were taken as a radius different from that of the corner radius, the flat inner wall tangentially meets the radius of the corner radius, which then proceeds at a second, fixed radius. In other words, at

Docket No.: RPC 0573 PUS
Serial No. 09/921,762

most, Elvin-Jensen discloses only two radii between the wall and the bottom surface, with zero blend and certainly no "variable radius blend." If the "radius" of the wall were included as a radius, a graph of the radius of the corner of Elvin-Jensen would show: a) there are only two (at most) radii (the infinite radius of the flat inner surface of the wall and the fixed radius of the corner); and b) there is no "variable radius blend" because there would be a discontinuity between the "infinite" radius of the wall and the fixed, single radius of the corner. Therefore, Elvin-Jensen does not disclose a "variable radius blend" as required by claims 8 and 31.

The Examiner's proposed motivation is "it would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness."

None of the Examiner's proposed motivation for this modification of the Apps '532 crate is found in either Apps '532 or Elvin-Jensen. Additionally, the Examiner's proposed motivation of reducing "the trapping of dirt and debris in these corner portions" does not work in the design in the Apps '532 patent. The Examiner is calling the posts 79 in the Apps '532 patent "the inner surface of the side wall." With or without a variable radius blend, the posts 79 are walls perpendicular to the side walls 22, 24, 26, 28, and therefore form corners with the side walls. Thus, even if one were make the inner edge of the post 79 a "variable radius blend," there would still be corners near the post 79. Therefore, there is no motivation for the proposed modification of Apps '532.

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

Obviousness Rejection Over Apps '532 in View of Wise

The Examiner has rejected claims 12-15 as obvious over Apps '532 in view of Wise. As explained above, Wise discloses gussets for the purpose of supporting a lip extending upwardly from a position outwardly of the periphery of the side walls. There is no such lip in Apps '532 that would benefit from this additional support. In fact, because Apps '532 includes a single upper edge of the side wall, the stability of the side wall would be reduced if gussets of the type shown in Wise were somehow added. Therefore, claims 12-15 are not obvious.

Obviousness Rejection Over Prior Art Figure 1 in View of Elvin-Jensen

The Examiner has rejected claims 34, 38 and 39 as obvious over the Prior Art Figure 1 in view of Elvin-Jensen. The Examiner's proposed motivation for this modification of the Prior Art Figure 1 crate is found in neither the Prior Art Figure 1 crate nor in Elvin-Jensen. Therefore, claims 34, 38 and 39 are independently patentable.

Docket No.: RPC 0575 PUS
Serial No. 09/921,762

CONCLUSION

Reconsideration of the application as amended is requested. Please charge \$126 for seven claims in excess of twenty to Deposit Account No. 50-1984. If any other fees or extensions are due, please charge Deposit Account No. 50-1984.

Respectfully submitted,



Konstantine J. Diamond
Registration No. 39,657
4010 East 26th Street
Los Angeles, California 90023
Telephone: (323) 262-5145
Facsimile: (323) 269-8506

Dated: October 29, 2003